

1 LEGISLATIVE BOARD OF ETHICS

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3 RULE 1: PROCEDURES

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7 **A. Meetings**

8 A quorum for transaction of board business shall consist of at least a majority of the
9 members, which shall include not less than a majority of the citizen members.

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11 **B. Filing of Complaints**

12 (1) The board shall decide complaints alleging violations of chapter 42.52 RCW and
13 rules adopted under it. Complaints may be filed by any person personally, by his or her
14 attorney or the board. Complaints must be written on a form prescribed by the board,
15 signed under oath by the complainant or his or her attorney, and directed to the board. A
16 copy of the complaint shall be provided to the respondent by the board staff.

17 (2) Upon receipt, complaints shall be assigned a reference number. The board shall
18 maintain and keep current for public inspection a status sheet which shall contain with respect
19 to each complaint its reference number, the date received by the board, and its present
20 status, including the date of any hearings scheduled. The name of the complainant and the
21 person charged shall be entered on the status sheet following the determination of reasonable
22 cause provided for in section D. of this rule.

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24 **C. Investigation of Complaints**

25 (1) Each investigation shall be limited to the alleged facts contained in the complaint.

26 (2) On each complaint, the staff shall first conduct a jurisdiction investigation for the
27 purpose of determining whether the board has personal and subject-matter jurisdiction. If the
28 staff concludes that the complaint is within the jurisdiction of the board, the staff shall
29 commence an investigation of the allegations. If the staff concludes that the complaint is not
30 within such jurisdiction, the staff shall end the investigation and shall provide the board with
31 the investigative reports as required in paragraph (4) of this section.

32 (3) If the complainant alleges a violation of RCW 42.52.450 by a legislator, the board
33 shall provide the complaint to the attorney general for investigation of such allegation by the

1 attorney general For purpose of such investigation, the attorney general shall serve as the
2 board's staff.

3 (4) The results of each investigation shall be reduced to writing and included in an
4 investigative report which shall be provided to the board for the purpose of making a
5 determination under section D. of this rule. If the board desires more information, it may
6 require the staff to investigate further. The results of such additional investigation shall also
7 be reduced to writing and included in an investigative report.

8 9 **D. Determination of Reasonable Cause**

10 (1) The board shall review the results of the investigation and shall determine
11 whether the complaint is within its jurisdiction and, if so, whether there is reasonable
12 cause to believe that a violation has occurred.

13 (2) If the board determines that the complaint is not within its jurisdiction
14 that there is not such reasonable cause, it shall issue an order dismissing the
15 complaint and shall notify the complainant, the respondent and news media and
16 others who have requested notice of the board's actions with a copy of the complaint
17 and the board's reasons for dismissal.

18 (3) If the board determines that the complaint is within its jurisdiction and that
19 there is such reasonable cause, the board shall conduct or provide for conducting
20 public hearing on the complaint.

21 22 **E. Notice of Hearing and Respondent's Answer**

23 (1) The board shall provide notice of the public hearing to the complainant, the
24 respondent and news media and others who have requested notice of the board's actions.

25 (2) The notice shall include the board's determination of reasonable cause as well as
26 the date, time and place for the hearing. The notice shall provide that the respondent shall be
27 entitled to appear in person or otherwise, with or without counsel, submit testimony be fully
28 heard, and cross-examine witnesses. The notice shall provide the respondent with an
29 explanation of the option to request that the hearing be conducted by an administrative
30 judge if the penalty for the alleged violation may be greater than \$500.

31 (3) The respondent shall be notified of the date of the hearing no later than forty-five

1 days before the hearing date. At the request of the respondent, the board may move the
2 hearing to an earlier date.

3 (4) The respondent shall file a written answer to the complaint not later than thirty
4 days after service of the notice of hearing. The answer shall include either a request for or
5 a waiver of the right to request an administrative law judge if the penalty for the alleged
6 violation may be greater than \$500. The board may extend the time for an answer, on a
7 showing of good cause. Absent a showing of good cause, failure to file a written answer
8 shall be deemed an admission to the facts alleged in the complaint and the determination.

9 10 **F. Conduct of Hearings**

11 (1) From the time the board issues notice of a public hearing on a complaint, the
12 proceeding shall be conducted pursuant to the Administrative Procedure Act (chapter 34.05
13 RCW), except as modified by chapter 42.52 RCW or these rules. Prior to the issuance of
14 such notice, the board's consideration and disposition of a complaint shall not be considered
15 an adjudicative proceeding. In the case of a conflict between Chapter 34.05 RCW and these
16 procedures, the procedures rules adopted by the board shall take precedence.

17 (2) All hearings conducted under this section are open to the public. The board's
18 deliberations on a complaint that do not occur during a public hearing are confidential. The
19 staff's written investigative results submitted to the board under subsection (4) are also
20 confidential.

21 (3) A hearing shall be conducted either by the board or by an administrative law judge.
22 If an administrative law judge participates, either by request of a respondent pursuant to RCW
23 42.52.500, or by the board on its own initiative, the board may choose to sit with the
24 administrative law judge to hear the matter and to enter a final order at the conclusion of the
25 proceedings, or to have the administrative law judge hear the matter alone and prepare an
26 initial order for review by the board. If an administrative law judge sits with the board, he or
27 she shall rule on procedural and evidentiary matters.

28 (4) Parties to a complaint proceeding shall be the respondent and the board staff
29 assigned to present the case in support of the complaint pursuant to RCW 42.52.430(2).
30 Parties are subject to the ex parte restrictions stated in RCW 34.05.455.

31 (5) When a complaint has been filed with the board, neither the complainant, nor
32 than board staff, nor any other person shall have special standing to participate or intervene

1 in the investigation or consideration of the complaint by the board.

2 (6) Board staff assigned to investigate a complaint pursuant to RCW 42.52.420 may
3 be subsequently assigned as adviser (to the board) following a determination of reasonable
4 cause, without regard to other restrictions of RCW 34.05.455 and .458.

5 (7) The board may subpoena witnesses, compel their attendance, administer oaths,
6 take testimony of a person under oath, and require production for examination of any
7 books, papers, documents or tangible things relating to any matter under investigation in
8 hearing before the board. The subpoena shall:

9 (a) Specifically describe the testimony which is sought and materials to be
10 produced in the form of designated books, papers, documents or tangible things under control
11 of the witness;

12 (b) Set forth a reasonable time and place for the taking of testimony and
13 production of the material; and

14 (c) Notify the person that if the testimony is not given or designated materials
15 are not produced, the board will apply to the superior court for an appropriate order or other
16 remedy. The subpoena may be personally delivered or sent by certified mail, return receipt
17 requested.

18 (8) No party shall have the right to issue subpoenas or to demand interrogatories,
19 depositions, or other forms of discovery, without prior approval by the board.

20 (9) The board may conduct all or part of the hearing by telephone, television or other
21 electronic means, if each participant in the hearing has an opportunity to participate, to
22 hear and, if technically feasible, to see the entire proceeding while it is taking place.

23 (10) The time limits stated in RCW 34.05.419 shall not apply to board complaint
24 proceedings.

25 (11) Service of notices, filings, pleadings and other papers shall be made personally
26 or by first-class registered, certified mail by electronic telefacsimile transmission and
27 same-day mailing of copies or by commercial parcel delivery company. Service by mail shall
28 be regarded as completed upon deposit in the United States mail properly stamped and
29 addressed. Service by electronic telefacsimile transmission shall be regarded as completed
30 upon production by the telefacsimile device of confirmation of transmission. Service by
31 commercial parcel delivery shall be regarded as completed upon delivery to the parcel delivery
32 company with charges prepaid.

1 **G. Prehearing conferences**

2 (1) In any proceeding, the board on its own motion or upon request by a party or their
3 authorized representative may direct the parties to appear at a specified time and place for
4 a conference to consider:

- 5 (a) Simplification of issues;
- 6 (b) The necessity of amendments to the hearing notice;
- 7 (c) The possibility of obtaining stipulations and admissions of facts and of
8 documents;
- 9 (d) Limitation on the number of witnesses and
- 10 (e) Procedure and such other matters as may aid in the disposition of the
11 proceeding.

12 (2) Prehearing conferences may be presided over by the board or an administrative
13 judge.

14 (3) Prehearing conferences may be held at a time and place or by telephone, television,
15 or other electronic means, as specified by the presiding officer.

16 (4) Following the prehearing conference, the presiding officer shall issue an order
17 reciting the action taken and decisions made at the conference. If no objection to the order
18 is filed with the presiding officer within seven days after the date the order is mailed, the
19 order shall control the subsequent course of the proceeding unless modified for good cause
20 by subsequent order.

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22 **H. Stipulation and Settlement**

23 (1) Any matter before the board may be settled by stipulation after completion of the
24 staff investigative report. Settlement of a matter may be concluded by:

- 25 (a) Stipulation of facts or
- 26 (b) Stipulation of facts, conclusions and penalty.
- 27 (2) A stipulation must be signed by the respondent or his or her representative and
28 presented to the board. If the stipulation is presented prior to a board determination of
29 reasonable cause, the stipulation shall be received in executive session. If the stipulation
30 is received after the determination of reasonable cause, it shall be received at the public hearing.

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32 (3) The board may accept, reject or modify the proposed stipulation if the board

1 accept the stipulation or modifies the stipulation with the agreement of the respondent and
2 enters an order in conformity with the stipulation. The stipulation shall become part of the
3 public record. If the stipulation is rejected by the board, it shall be withdrawn and cannot be
4 used by or against the respondent in any proceeding before the board.

5 (4) The board may direct staff to commence discussions with the respondent or his or
6 her representative in an effort to achieve a stipulation. Staff has no authority to bind or
7 obligate the board. The stipulation may be presented by staff who may recommend its
8 acceptance, rejection or modification.

9 10 **I. Final Order in Complaints**

11 (1) If the board in its final decision determines that the person has committed a
12 violation, it shall issue an order stating its findings of fact, conclusions of law, and specifying
13 such enforcement or remedial actions as the board finds appropriate. If the board in its final
14 decision determines that the person has not committed a violation, it shall issue an order
15 stating its findings of fact, conclusions of law, and dismissing the complaint.

16 (2) Notification of the results of final orders in complaint cases shall be accomplished
17 by simultaneous mailing to the complainant and respondent. Other distribution shall occur the
18 following working day.

19 (3) Following a hearing in which the board participates, the board shall:

20 (a) Set forth in writing its findings of fact, conclusions of law, and decision on
21 the merits of the case; and

22 (b) Deliver, either in person or by mail, to the respondent, complainant, and
23 news media and others who have requested notice of the board's actions, a copy of the
24 findings of fact, conclusions of law, and decision.

25 (4) Following a hearing in which the board does not participate, the administrative
26 judges shall:

27 (a) Set forth written findings of fact, conclusions of law, and decision on the
28 merits of the case in an initial order;

29 (b) Deliver, either in person or by mail, to each party, board member, and board
30 counsel, a copy of the findings of fact, conclusions of law, and decision, including a statement
31 of the right to request review of the initial order by the board.

32 (c) If neither party files exceptions to the initial order within 20 days, the board

1 may adopt the initial order as the final order of the board.

2 (d) Within 20 days of entry of the initial order, either the board staff or the
3 respondent may file written exceptions to the initial order. Such exceptions shall be served
4 on all the parties, the Administrative Law Judge, board counsel, and all members of the
5 board. The board shall set a date for submission of written argument on the exceptions and
6 shall notify the board staff and the respondent in writing.

7 (e) The board shall review the initial order, any exceptions, and argument filed
8 and shall issue a final order which shall be delivered, either in person or by mail, to the board
9 staff, the respondent, complainant, and media and others who have requested notice of the
10 board's actions.

11 12 13 **J. Brief Enforcement Hearings**

14 (1) The board may provide a brief enforcement hearing for violations of provisions in
15 chapter 42.52 RCW in which the facts are undisputed, the violation appears to be relatively
16 minor in nature, and a penalty no greater than \$500 will be assessed for the violations.

17 (2) A brief enforcement hearing may be presided over and conducted by the chair or
18 a member of the board designated by the chair.

19 (3) When a violation is alleged, before taking action, the board staff shall send the
20 alleged violator notice which shall include:

21 (a) Alleged violation;

22 (b) Maximum amount of the penalty which can be imposed at the hearing and
23 the amount of any proposed fine; and

24 (c) Respondent's right to respond within ten days, either in writing or in person
25 to explain his/her view of the matter.

26 (4) At the time of the hearing, if the presiding officer believes alleged violations are of
27 such magnitude as to merit penalties greater than \$500, the presiding officer shall
28 immediately adjourn the hearing and direct the matter be scheduled for an enforcement
29 hearing by the full board or an administrative law judge.

30 (5) At the time any final action adverse to other respondents is taken, the presiding officer
31 shall serve upon each party a written statement describing the violation, the reasons for the
32 decision, the penalty imposed, and their right to request review by the board at the next

1 scheduled board meeting.

2 (6) The written decision of the presiding officer is an initial order. If no review is taken
3 of the initial order, the initial order shall be the final order.

4 (7) The board shall conduct a review of the initial order upon the written or oral request
5 of a party if the board receives the request within twenty-one days after the service of the
6 initial order.

7 (8) If the parties have not requested a review, the board may conduct a review of the
8 initial order upon its own motion and without notice to the parties, but it may not take any
9 action on review less favorable to any party than the original order without giving that party
10 notice and an opportunity to explain that party's view of the matter.

11 (9) The order on review shall be in writing stating the findings made, and the reasons
12 for the decision, and notice that judicial review is available. The order on review shall be
13 entered within thirty days after the date of the initial order or of the request for review,
14 whichever is later.

15 16 **K. Procedure Applicable to Advisory Opinions**

17 The legislative ethics board shall issue advisory opinions with regard to the application
18 of chapter 42.52 RCW and the rules adopted under the chapter. The following procedures
19 apply to requests for advisory opinions:

20 (1) Requests for advisory opinions may be made by any legislator, legislative
21 employee, or board member. Requests may also be made by other persons with respect to
22 the application of the State Ethics Act to them. A request must be stated hypothetically
23 unless the individual requests a specific opinion concerning his or her own conduct. Requests
24 must be written, signed, and directed to the chair of the board in care of Board Counsel, PO
25 Box 40482, Olympia, WA 98504-0482. Requests shall supply such information as the board
26 requires to enable it to issue the opinion. The identity of the person making the request shall
27 be known only to the chair and staff of the board, unless such confidentiality is given in the
28 request. Requests for advisory opinions must be received more than six days prior to a
29 scheduled board meeting to be considered at that meeting; the board may waive this notice
30 requirement only by a unanimous vote of those present.

31 (2) The board shall either:

32 (a) Issue a written advisory opinion or

(b) notify the person requesting such opinion that the request is denied and the reason for the denial.

(3) The staff shall notify the person requesting the opinion as to the status of the request within thirty days and at thirty day intervals thereafter until final action is taken.

(4) Upon receipt, requests shall be assigned a reference number. The board shall maintain and keep current for public inspection a status sheet which shall contain with respect to each request its reference number, the date received by the board and its present status.

(5) The board shall make available to the public copies of the status sheets and advisory opinions issued by the board.

L. Procedure Applicable to Informal Advice

(1) It is a function of the board's staff to provide ethical advice to persons eligible to request advisory opinions. In providing such advice, the staff should also provide a disclaimer that the advice represents solely the opinion of the staff and is not the opinion of the Board or in any respect binding on the Board.

(2) In considering a complaint, the board will give weight to the fact that the person charged in the complaint relied in good faith on staff advice.

(3) The board may review staff advice provided under subsection (1) and may approve or disapprove any advice so provided. However, any such approval or disapproval is limited to whether the staff had reasonable grounds for the advice and should not be interpreted as indicating that the board approves or disapproves the actual advice provided. Only advisory opinions issued by the board and complaints decided by the board may be relied on for purposes of determining how the board will interpret a provision of the State Ethics Act.

M. Designated Ethical Advisers

(1) The Chief Clerk of the House and the Secretary of the Senate may each designate and assign legal counsels as Designated Ethical Advisers to assist legislative staff and, if requested, the Legislative Ethics Board. The responsibilities of each adviser should be in accordance with this rule.

(2) No more than two such Designated Ethical Advisers may be from each legislative body and their designation and assignments should be within the sole discretion of the Chief

1 Clerk of the House and the Secretary of the Senate respectively.

2 (3) The advisers may assist legislators and employees in their respective legislative
3 bodies with advice and analysis based upon legislative ethics statutes and rules and upon
4 published opinions of the Legislative Ethics Board. In those instances where an adviser has
5 conferred with the Board staff and the Board staff has concurred with the proposed advice,
6 the advice shall be deemed to be entitled to the protections afforded in Rule 1 L(2). Advice
7 or analysis which is not concurred in by Board staff will be viewed as in-house legal advice
8 and outside the scope of the protections provided in Rule 1 L(2). Requests for advisory
9 opinions are appropriate in cases where designated ethics advisers and Board staff disagree.

10 (4) The advisers are expected to serve as liaisons between their respective legislative
11 bodies, including their chief administrative officers, and the Board staff and may
12 communicate matters of mutual concern to the Board.

13 (5) The advisers in coordination and consultation with Board staff may develop and
14 assist Board staff in implementing a program of ethics training and education for legislators
15 and legislative staff.

16 (6) The advisers should, to the extent reasonably possible, attend Board meetings and
17 be available and prepared to comment on matters before the Board with the exception of
18 formal complaints. The designated advisers will not participate in the Board's review and
19 decision making on formal complaints before the Board.

20 (7) The designated advisers may assist legislators and staff in the preparation of
21 advisory opinion requests, responses to complaints, and other communication with the Board
22 but shall not, however, represent members or staff before the Board as advocates on their
23 behalf.